

1 Counsel Appear on the Following Page
2
3
4
5
6

7 **IN THE UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**

9 Mohan Gil, Rodney Carr, Tony
10 Daniel, and Jermaine Wright,
11 individually, on behalf of others
12 similarly situated, and on behalf of
13 the general public,

14 Plaintiffs,

15 v.

16 Solectron Corporation, Flextronics
17 International, USA, Inc., and DOES
18 1-10 inclusive,

19 Defendants.
20
21
22
23
24
25
26
27
28

Case No. C 07-06414 RMW (HRL)

**JOINT CASE MANAGEMENT
STATEMENT**

Honorable Ronald M. Whyte
Complaint Filed: December 19, 2007

1 NICHOLS KASTER & ANDERSON LLP
2 Matthew C. Helland, CA State Bar No. 250451
3 Helland@nka.com
4 One Embarcadero Center, Suite 720
5 San Francisco, CA 94111
6 Telephone: (415) 277-7235
7 Facsimile: (415) 277-7238

8 NICHOLS KASTER & ANDERSON PLLP
9 James H. Kaster, CA State Bar No. 248949
10 Kaster@nka.com
11 Jessica J. Clay, MN State Bar No. 318772
12 (admitted pro hac vice)
13 4600 IDS Center, 80 South 8th Street
14 Minneapolis, MN 55402
15 Telephone: (612) 256-3200
16 Facsimile: (612) 338-4878

17 Attorneys for INDIVIDUAL AND REPRESENTATIVE PLAINTIFFS

18 LITTLER MENDELSON
19 A Professional Corporation
20 Garry G. Mathiason, Bar No. 051119
21 650 California Street, 20th Floor
22 San Francisco, CA 94108.2693
23 Telephone: (415) 433-1940
24 Fax: (415) 399-8490
25 gmathiason@littler.com

26 LITTLER MENDELSON
27 A Professional Corporation
28 Robert J. Wilger, Bar No. 168402
50 West San Fernando St., 15th Floor
Telephone: (408) 998-4150
Fax: (408) 288-5686
rwilger@littler.com

Attorneys for DEFENDANTS

1 Counsel for Plaintiffs and Counsel for Defendants Solectron Corporation
2 and Flextronics International, USA, Inc., (hereinafter referred to collectively as
3 “Defendants”) met telephonically on March 26, 2008, and prepared the following
4 joint report. A pretrial conference has been set in this matter for April 18, 2008 at
5 10:30 a.m. in Courtroom 6.

6 **1. Jurisdiction and Service.**

7 This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 as
8 this case is being brought under the FLSA, 29 U.S.C. § 207 et seq. This Court has
9 supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.
10 The parties are unaware of any service of process, personal jurisdiction, subject
11 matter jurisdiction, or venue issues at this time.

12 **2. Facts**

13 **A. Plaintiffs’ Allegations**

14 Plaintiffs’ Complaint alleges seven causes of action relating to: (1) wage
15 and hour claims under the Fair Labor Standards Act (“FLSA”), as well as
16 California and Kentucky state law; and (2) unfair business practices under
17 California law.

18 Plaintiffs are non-exempt/hourly manufacturing and production employees of
19 Defendant. Plaintiffs allege that Defendant failed to pay Plaintiffs for time spent
20 donning and doffing protective gear, waiting to perform electro-static discharge
21 (ESD) testing and ESD testing. Plaintiffs also allege that Defendant engaged in
22 illegal time-clock rounding practices.

23 **B. Defendants’ Allegations**

24 Defendants deny that Plaintiffs were not fully compensated as required by
25 the applicable federal and state laws. Defendants paid Plaintiffs for all hours
26 worked as required by the applicable federal and state laws. Defendants did not
27 violate any laws as alleged by Plaintiffs and did not otherwise engage in any unfair
28 business acts or practices.

3. Disputed Factual and Legal Issues

The principal legal and factual disputes in this case are:

- Whether the Plaintiffs engaged in pre-shift and post-shift activities and, if they do, are they principal activities for purposes of the FLSA and state wage and hour laws. Alvarez v. IBP, Inc., 339 F.3d 894, 902-03 (9th Cir. 2003);
- Whether there is a de minimis exception to the FLSA. See Spoerle v. Kraft Foods Global, Inc., 527 F. Supp. 2d 860, 862 (W.D. Wis. 2007);
- If there is a de minimis exception, whether Plaintiffs' pre and post-shift activities were de minimis. 29 C.F.R. § 785.47;
- Whether Defendants' failure to compensate plaintiffs for their pre- and post-shift activities was willful. 29 U.S.C. §255(a).
- Whether Defendants' improperly rounded Plaintiffs' time such that the rounding procedures resulted in the failure to compensate the employees properly for all the time they have actually worked. 29 C.F.R. 785.48(b);
- Whether the Defendants engaged in unfair business practices under California Business and Professional Code Sections 17200 et seq., and, if so, whether the Plaintiffs can base their claim on Defendants' activities occurring outside of California, whether they can recover for Defendants' activities from outside of California, and whether Plaintiffs who reside outside of California can bring a section 17200 claim;
- Whether Plaintiffs donning and doffing of protective gear, and ESD testing resulted in insufficient meal and rest breaks under California law. Cal. Labor Code § 512; and
- Whether Plaintiffs can satisfy the requirements to bring their action as a national collective action under the FLSA, whether they can satisfy

1 the requirements to bring their action as a class action under
2 Fed.R.Civ.P. 23, and whether they can have both an opt-in collective
3 action and an opt-out class action in the same lawsuit.

4 **4. MOTIONS**

5 There are no current motions pending before the court. As set forth below in
6 section nine, Plaintiffs intend to bring a motion for conditional certification of a
7 national collective action and a motion for class certification under Fed. Rule Civ.
8 P. 23. The Parties propose Plaintiffs will file their motion for conditional
9 certification (first-tier analysis) of an FLSA class on or before July 1, 2008. The
10 Parties propose Plaintiffs will file their Rule 23 class certification motion on or
11 before May 1, 2009.

12 If the Court grants Plaintiffs' conditional certification motion, Defendants
13 will file a motion dismiss the class action claims as being inconsistent with their
14 collective action claims and a motion to decertify the class. In addition, Defendants
15 may file a motion for summary judgment or partial judgment.

16 **5. AMENDMENT OF PLEADINGS**

17 Plaintiffs anticipate that additional opt-in Plaintiffs will continue to join this
18 case, including Plaintiffs who worked in states other than California and Kentucky.
19 Plaintiffs anticipate that they may amend the Complaint to add additional named
20 plaintiffs to support state law claims in states other than California and Kentucky.
21 Additionally, Plaintiffs may amend the Complaint to add as defendants, any
22 temporary/staffing agencies that provided employees to Defendants. The Parties
23 propose that the deadline to amend the pleadings to add parties be January 1, 2009.

24 **6. EVIDENCE PRESERVATION**

25 The parties have made efforts to preserve both electronic and other evidence,
26 including putting a destruction hold on potentially relevant electronic and other
27 information and documents.

28 **7. DISCLOSURES**

1 The parties agree to exchange initial disclosures on or before April 23, 2008.

2 **8. DISCOVERY**

3 Plaintiffs served their first set of Interrogatories and Document Requests on
4 Defendants after the 26(f) meeting. Plaintiffs also served on Defendants Notices of
5 Taking of Deposition Pursuant to Fed. R. Civ. P. 30(b)(6) for dates to be
6 determined.

7 The Parties propose that discovery proceed simultaneously on class
8 discovery and merits discovery for the named and opt-in Plaintiffs, for maximum
9 judicial efficiency. They also agree that Defendants can take discovery of,
10 including depositions of all the opt-in Plaintiffs without leave of court, and that they
11 will likewise take discovery of, including depositions of, all of the relevant
12 witnesses (including co-workers and managers) relating to the claims of all of the
13 opt-in Plaintiffs, without leave of court. The Parties do not propose any limits on
14 discovery at this point in time, but reserve the right to re-visit the issue with the
15 Court should either party believe that the limits become necessary.

16 The parties anticipate that all discovery (class discovery and merits
17 discovery) shall be commenced in time to be completed by June 1, 2009. The
18 Parties propose that designation of expert witnesses and exchange of expert reports
19 should be completed by April 1, 2009.

20 **9. CLASS ACTIONS**

21 The Plaintiffs seek to certify this case as a national collective action under
22 the FLSA. The Plaintiffs also seek to certify three classes under Fed.R.Civ.P.
23 23(b)(1), (b)(2), and (b)(3): (1) a national class action for violations of California's
24 unfair business practices; (2) a California class for violations of California state
25 wage and hour laws; and (3) a Kentucky class for violations of Kentucky state wage
26 and hour laws. The classes are defined to include non-exempt employees in
27 assembly, refurbishing, testing, technician or repair positions.

28 As set forth in section four, the Parties propose Plaintiffs filing their motion

1 for conditional certification (first-tier analysis) of an FLSA class on or before July
2 1, 2008. The Parties propose Plaintiffs filing their Rule 23 class certification
3 motion on or before May 1, 2009. Defendants will file their oppositions to these
4 motions within the time limits provided by the Federal Rules of Civil Procedure.

5
6 **10. RELATED CASES**

7
8 Presently, the parties are unaware of any related cases or proceedings.

9 **11. RELIEF**

10 Plaintiffs' prayer for relief is detailed on pages 20 and 21 of the Complaint.
11 Because no discovery responses have been exchanged in this case, Plaintiffs cannot
12 calculate the precise extent of damages to the classes, however, this calculation will
13 be based upon a standard formula, wherein Plaintiffs receive 1.5 or 2 times
14 Plaintiffs' regular rates of pay, multiplied by Plaintiffs' good-faith estimates of
15 hours of overtime worked (see Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680
16 (1946)), plus, in California, premiums for meal and rest periods missed, plus
17 applicable penalties/punitive measures available under the statutes, and liquidated
18 damages, plus interest, attorneys fees and costs. Defendants have not filed any
19 counterclaims and, thus, are not presently seeking any relief from the Court in this
20 matter.
21
22
23
24

25 **12. SETTLEMENT AND ADR**

26 The Parties believe that it is too early in this case to decide on an ADR
27 process. The Parties propose to stipulate to an ADR process on or before
28 November 1, 2008.

1 **13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

2 The matter has been assigned to the Honorable U.S. District Court Judge
3 Ronald M. Whyte. Plaintiffs and Defendants do not consent to assignment to a
4 Magistrate Judge for all purposes.

5 **14. OTHER REFERENCES**

6 The Parties do not agree to binding arbitration, nor do they believe this
7 matter is suitable for reference to a special master, or the Judicial Panel on
8 Multidistrict Litigation.

9 **15. NARROWING OF ISSUES**

10 It is too early in the litigation to determine whether issues can be narrowed
11 for trial to expedite the presentation of evidence. However, the Parties agree to
12 work in good faith to determine if any issues may be narrowed, as the case
13 progresses.

14 **16. EXPEDITED SCHEDULE**

15 The parties do not believe this matter can be resolved on an expedited
16 schedule.

17 **17. SCHEDULE**

18 Plaintiffs propose the following deadlines:

- 19 • Motion for conditional certification – July 1, 2008;
- 20 • Motion for Rule 23 class certification – May 1, 2009;
- 21 • Discovery completed – June 1, 2009;
- 22 • Designation of expert witnesses and disclosures of expert reports
23 and/or opinions – April 1, 2009;
- 24 • Non-dispositive Motion Deadline - July 1, 2009;
- 25 • Dispositive Motion Deadline – September 1, 2009;
- 26 • Proposed Trial Date – December 1, 2009, or sixty (60) days from the
27 Court's ruling on any dispositive motions.

1
2 **18. Trial**

3 Plaintiffs have demanded a jury trial. Plaintiffs anticipate a trial to last
4 approximately seven days.

5 **19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR**
6 **PERSONS**

7 Plaintiffs have not yet filed the "Certification of Interested Entities or
8 Persons" pursuant to Civil L.R. 3-16. Defendants have filed their Certification on
9 April 4, 2008, and identified Flextronics International, Inc., as an interested party.
10 Plaintiffs will file their Certificate prior to the Case Management Conference.

11
12 Dated: April 16, 2008

NICHOLS KASTER & ANDERSON, PLLP

13 By: s/Jessica J. Clay
14 James H. Kaster, #248949
15 Matthew C. Helland, #250451
16 Jessica J. Clay, MN # 318772, pro hac
17 vice
18 ATTORNEYS FOR PLAINTIFFS AND
19 THE PUTATIVE CLASSES

20
21 Dated: April 16, 2008

LITTLER MENDELSON
A Professional Corporation

22 By: _____
23 Robert J. Wilger

24 ATTORNEYS FOR DEFENDANTS

25 Firmwide:84788005.1 014692.1110